

petitioner in its representation before respondent no. 2 and the especially the judgment dated 16/10/2017 passed by Peshawar High Court, Mingora Bench (Darul Qaza), Swat in writ petition no. 228-M/2014 & Writ Petition No. 227-M/2014. Copy of the judgment dated 16/10/2017 is attached as ~~Annexure~~ K.

H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

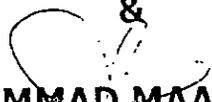
It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 06-08-2020

APPELLANT


KABEER KHAN

THROUGH: 
NOOR MOHAMMAD KHATTAK


MUHAMMAD MAAZ MADNI
ADVOCATES

Appeal dated 02-06-2020 which was not responded till date.
Copy of Departmental Appeal is attached as **Annexure**
..... J.

9- That appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUND:

- A- That the inaction of the respondents by not granting seniority to the appellant w.e.f. 07/08/2015 i.e. the date of appointment of other colleagues is against the Law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan-1973.
- C- That the respondents acted in arbitrary and malafide manner while by not granting seniority to the appellant w.e.f. 07/08/2015 i.e. the date of appointment of other colleagues is also against norms of Natural Justice.
- D- That act of the respondents by not granting seniority to the appellant w.e.f. 07/08/2015 i.e. the date of appointment of other colleagues against the principle of natural justice, hence not tenable and liable to be set aside.
- E- That the appellant has been highly discriminated with the act of the respondents by not granting seniority to the appellant w.e.f. 07/08/2015 i.e. the date of appointment of other colleagues.
- F- That the act of the respondent by not granting seniority to the appellant w.e.f. 07/08/2015 i.e. the date of appointment of other colleagues is also against the spirit of the judgment passed by writ petitions filed by the colleagues and the appellant wherein clear directions has been issued to the respondent to issued appointment order in this month but the appellant is issued appointment order on 11/10/2018 with immediate effect.
- G- That, act of the respondents by not granting seniority to the appellant w.e.f. 07/08/2015 i.e. the date of appointment of other colleagues is against various judgments passed by this

2012. Copy of the advertisement is attached as **Annexure** **A.**

3- That appellant is a disable and highly qualified person have bachelor Degree from University of Peshawar as well as Certificate of Teaching from Allama Iqbal Open University Islamabad. Copy of Disability Certificate & Educational Testimonials is attached as **Annexure** **B & C.**

4- That appellant being eligible in all respect applied for the post of Certified Teacher (BPS-09) now (BPS-15) and after successfully gone through the selection and stood at serial no. 13 of the Final Merit List prepared for the post of CT of Sub-Division Kohat and as such stood at top of merit list prepared for Disable persons. Copy of Merit List & Disable Merit List is attached as **Annexure** **D & E.**

5- That some of the colleagues of the appellant who were not issued appointment order filed writ petition no. 2629-P/2013 which was decided in favour of the petitioners with the direction to "... ISSUE APPOINTMENT LETTER IN THE NAMES OF THE PETITIONERS FOR THEIR RESPECTIVE POSTS WITHIN THIS MONTH" vide judgment dated 05-03-2015 and accordingly those petitioners were issued appointment order dated 07/08/2015. Copy of the judgment dated 05/03/2015 & appointment order is attached as **Annexure** **F & G.**

6- That appellant along with other colleagues filed writ petition No. 1446-P/2015 by following Principal of Consistency which was also decide vide judgment dated 13-05-2015 with the direction "Accordingly, for the reason stated hereinabove, this petition is allowed in the above terms and the respondent are directed tot treated the petitioners in accordance with the prevailing law and grant them all benefits, which others 'similarly place' have been granted by the respondents in W.P. No. 2629-P/2013 decided on 05-03-2015." Copy of the judgment dated 13/05/2015 is attached as **Annexure** **H.**

7- That the respondent while implementing the judgment passed by Peshawar High Court vide dated 05/03/2015 issued appointment order dated 11/10/2018 with immediate effect and not from the date when the other colleagues are issued appointment order dated 07/08/2015. Copy of appointment order date 11/10/2018 is attached as **Annexure** **I.**

8- That the appellant feeling aggrieved from the inaction of the respondents by not granting seniority w.e.f. 07/08/2015 i.e. from the date when the other colleagues were issued appointment order dated 07/08/2015. Copy of Departmental

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2020

Mr. KABEER KHAN, CT (BPS-15),
P.O Qaum Taz Khel Payyan Jogi, Sub-Division Kohat.

.....**APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Civil Secretariat, Peshawar.
- 2- The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, Sub-Division Kohat.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE INACTION OF THE RESPONDENTS BY NOT GRANTING SENIORITY TO THE APPELLANT W.E.F. 27-08-2015 I.E. FROM THE DATE WHEN OTHER COLLEAGUES ARE GIVEN APPOINTMENT ORDER AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL DATED 02-06-2020 OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the inaction of the respondents by not granting seniority to the appellant w.e.f. 27/08/2015 i.e. from the date of other colleagues have been appointed. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of respondent Department as is working as Certified Teacher (CT) (BPS-15) since from the date of appointment.
- 2- That in the year 2012 the respondent no. 3 floated an advertisement in daily newspaper "AAJ" dated 04/12/2012 for filling up of various post of teachers including the post of CT (BPS-09) now (BPS-15) at serial no. 04 of the advertisement falling vacant under the control of respondent no. 3 in which last mentioned as 18-12-

2 (10)
GROUNDS.

- A) Incorrect. As elucidated under para 6 above.
- B) Incorrect. Respondent no.3 was on merit and was appointed accordingly as per policy. Petitioner did not appear in viva/interview could not be appointment being negligent in his own cause.
- C) Incorrect as elucidated in para 6 above.
- D) Incorrect. The minimum eligibility criteria has already full filled ^{by} the respondent No.3 who attended viva/interview and the petitioner did not appear for interview nor submitted his documents for scrutiny, therefore could not be entitled for appointment.
- E) Incorrect. Respondent department have acted as per law / policy and adopted a procedure of fairness and transparency in the process of appointment.
- F) Petitioner has been treated as per law/ policy and no right of petitioner have been violated by respondents.

PRAY.

In the light of above stated legal factual position it is humbly requested that the instant petition being devoid of merit may kindly be order as dismissed.

Respondent No.1


Director Education FATA,
Peshawar.

Respondent No.2


Agency Education Officer
F.R Kohat.

Writ Petition: NO 276/2018

Annex E

26/12/18
26/1/18

Mr. Kabir KhanPetitioner

VERSUS.

Director Education FATA & Others.....Respondents.

Comments on behalf of Respondents No.1 & 2.

PRELIMINARY OBJECTIONS.

1. That the petitioner has no cause of action, locus standi to file the instant petition.
2. That the petitioner has concealed material facts from the Honorable court.
3. That the matter is badly time barred.
4. That the instant petition is not maintainable in the present form being service matter.
5. That the conduct of the petitioner estopped themselves to bring the instant petition.
6. That the instant petition is not maintainable before the honorable court, the matter being relating to affairs of FATA under Article-247(7) of the constitution.

ON FACTS.

1. The petitioner was appointed as PST in FR Kohat on disable quota Endst No. 8138-40 dated: 20/10/2005.
2. In correct. The petitioner, applied for the post of (CT) Teacher vide advertisement dated: 22/01/2016 followed by corrigendum copy attached as. **(Annexure-A)**.
The no of vacant position of CT posts were three in total 90 copy of breakup of post attached as **(Annexure-B)**.
It is pertinent to mentioned over here that there was only one vacant post of disable available at the time of advertisement whereas the other vacant post of disable have already been occupied by disable candidate namely Kalim Ullah CT at GMS Landi Khel F.R Kohat where as the petitioner along with respondent No. 3 had applied against disable quota.
3. Incorrect. As mentioned above there were in total 90 CT Male Post at the time of advertisement only one post reserved for disable quota as per 2 % share could be limited to 1 % only.
4. Subject to record.
5. The petitioner along with other candidates were called for interview to be held on 12/08/2017, whereas on the target date the petitioner did not appear for viva test/interview and remained absent. Photo copy of attendance sheet is attached as, **(Annexure-C)** Consequently respondent No. 3 appointed next on merit who attended viva test/interview therefore the petitioner negligent in his own cause could not be entitled for any relief under the law.
6. Incorrect. All the candidates who were on merit appeared before the committee on respective date of interview as the attendance sheet reflect the attendance of 61 candidates who appeared except the petitioner who did not appear and remained absent. It is sufficient proof of the fact that the candidates were properly inform through one way or the other and strong presumption can be drawn in respect of the petitioner that he was well aware about the date of interview but could not attend the same therefore pretending before the court that he was not so called by the department.

Agency / FR Wise No. of Vacant Posts

Annex D

Contd.

Name of Agency / FR	Name of Tehsil	SST					AT									CT	PET			Qari			PST			Total		
		Male		Female		Total	High			Middle			M	F	T		M	F	T	M	F	T	M	F	T			
		Bio/Chem	Phy/Math	Bio/Chem	Phy/Maths		M	F	T	M	F	T																
																											M	F
Orakzai Agency	Lower	1	2	2	1	6	0	0	0				0	1	0	1	1	0	1	0	0	0	0	0	14	0	14	22
	Central	1	1	0	1	3	0	0	0				0	1	0	1	1	0	1	0	0	0	0	0	5	0	5	9
	Upper	0	0	1	1	2	0	0	0				0	1	0	1	0	0	0	0	0	0	0	0	5	0	5	9
	Ismailzai	1	1	1	0	3	0	0	0				0	0	0	0	0	0	0	0	0	0	0	0	4	0	4	6
FR Bannu	FR Bannu	0	0	1	0	1	0	0	0	5	5	10	6	4	10	0	0	0	0	0	0	0	0	0	3	0	3	8
FR Peshawar	FR Peshawar	1	0	1	1	3	0	0	0				0	2	3	5	2	1	3	0	2	2	11	3	14	27		
FR Kohat	FR Kohat					4	0	0	0				0	3	5	2	1	3	0	2	2	11	3	14	27			
FR Lakki	FR Lakki	0	0	1	1	2	0	0	0				0	1	4	5	1	2	3	0	2	2	20	15	35	50		
FR D.I.Khan	FR D.I.Khan	1	1	1	0	3	0	0	0				0	6	3	9	3	0	3	2	0	2	19	1	20	37		
FR Tank	FR Tank	2	2	2	2	8	0	0	0				0	6	3	9	3	0	3	2	0	2	19	1	20	37		
G.Total		34	28	27	23	112	4	0	4	6	10	16	136	96	232	55	26	81	25	21	46	472	98	570	1068			

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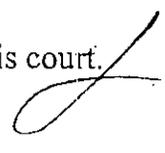
Annex ⁴ C

W.P # 276-P/2018

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5. As hinted hereinabove that the annexure which respondents have annexed themselves with their comments is clearly showing that there were 136 vacant posts for the appointment of C.T Teacher (male) and furthermore respondents have miserably failed to bring on record any interview letter which might have been sent to the petitioner for his interview for certain specified date. All that hinted hereinabove clearly demonstrates that respondents have unjustly and unfairly refused the petitioner for appointment against 2% disable quota against 136 C.T Teacher (male) who was better placed in terms of merit than the respondent No.4.

6. In the light of above, we allow this petition and direct the respondents to issue appointment letter to the petitioner of C.T Teacher against 2% quota of disable person against 136 posts of C.T Teacher (male) within 15 days from the date of receipt of the order of this court.



Handwritten Signature
CHIEF JUSTICE
 (A)
JUDGE

Announced.
 Dt. 25/09/2018.

HON'BLE MR. JUSTICE WAQAR AHMAD SETH, C.J. &
HON'BLE MR. JUSTICE ABDUL SHAKOOR.
 (A.K.KHAN, C.S)

CERTIFIED TO BE TRUE COPY
 Examiner
 Peshawar High Court, Peshawar
 Authorised Under Article 57 of
 The District Shikhar Order 1974

Annex C

W.P. 2629-P/2013

8



S.No.5 and resultantly falls in the top merit order keeping in view the number of vacancies as available for the A.T (Male) posts.

6. In view of such background of the case and the record so furnished by the concerned representatives of the Education Department, we understand that the petitioners have been highly discriminated against for the last two years and have not been given an even-handed treatment. We thus allow this writ petition and direct the respondents to issue appointment letters in the names of the petitioners for their respective posts within this month.

[Signature]
JUDGE

56859

[Signature]
ASSOCIATE
JUDGE

Date of Presentation of Petition	31-10-22
No. of Petitioners	10
Category	
Total	40
Date of Preparation of List	31-10-22
Date of Delivery of List	31-10-22

[Signature]

[Signature]
21 OCT 2022



Annex B

7

11/10/2018

OFFICE OF THE DISTRICT EDUCATION OFFICER
TSD DARRA KOHAT.
Gate No.2 K.D.A Kohat.
Phone & Fax No. 0922-9260321.

Letter No: 405 / Dated: 11/10/2018.

APPOINTMENT.

Consequent upon the decision of Peshawar High Court No. 276 dated: 02.10.2018 Mr. Kadir Khan S/O Khan Samand is hereby appointed against vacant CT Post at GHS Kohat in BPS-15 @ (Rs-16120-1330-56020) PM plus usual allowances as per the rules with effect from taking over charge in the best interest of public service.

TERMS & CONDITIONS:-

1. A charge report should be submitted to all concerned.
2. If the candidate wish to resign from his post. He will given one-month prior notice or his pay for one month will be forfeited in lieu thereof.
3. He should produce his original, academic, professional Certificates, Domicile and NIC copy before proper verification from the quarters concerned.
4. He should produce his Health and age Certificates from the Medical Superintendent concerned.
5. He may not be handed over charge if he is below 18 years or above 45 years.
6. If he fails to report within 15 days then his appointment order will be treated as cancelled automatically.
7. No salary may be drawn before the verification of all the testimonials from the quarter concerned.
8. If any technical legal flaw is pointed out the appointment will stand as cancelled.

CC:

1. Director Education FATA, K.P.K Peshawar.
2. Assistant Political Agent, F.R Kohat.
3. District Account officer Kohat.
4. AEO (N.C.), F.R Kohat.
5. Candidate Concerned.

ATTESTED

[Signature]

[Signature]
District Education Officer
TSD Darra Kohat. 2

District Education Officer
TSD Darra Kohat.

(17)

(6)

58.	384000357	Abu Bakar Sadiq	
59.	38400717	Umar Farooq	<i>Absent</i>
60.	38400057	Haji Muhammad	_____
61.	60400041	Wajid Khan	_____

Mae olh
Agency Education Officer
F.R Kohat

25. ✓	38400286	Muhammad Ijaz	
26.	38400631	Dil Nawaz	
27. ✓	60402077	Zeeshan Ullah	Absent
28. ✓	30400007	Farman Ullah	Absent
29.	38400493	Samiullah	
30.	38400696	Muhammad Shafiq	Absent
31.	60400424	Muhammad Nawaz	
32.	38400480	Khaliq Aqbar	
33.	30400146	Muhammad Kamran	Absent
34.	38400757	Shair Nawaz	
35.	38400611	Yar Mast	
36. ✓	38400123	Hikmat Khan	
37.	38400306	Fazal Khaqim	
38. ✓	38400124	Noor Zaman	Absent
39.	60401261	Awal Noor	Absent
40.	38400729	Muhammad Khalil	Absent
41. ✓	38400559	Khawass Khan	Absent
42. ✓	38400394	Abdul Wahid	Absent
43.	38400417	Muhammad Shuaib Khan	Absent
44. ✓	60401517	Muhammad Nawaz	Absent
45.	38400257	Jan Shiar	
46. ✓	38400062	Zahid Hussin	Absent
47.	38400721	Akhtar Munir	
48.	38400365	Kabir Khan	Absent
49.	38400733	Mir Hassan	
50.	60400777	Muhammad Kabir	
51. ✓	38400018	Riaz Wali Khan	
52.	38400222	Shabir Ahmad	
53.	60400009	Muhammad Asghar	Absent
54.	38400442	Muhammad Riaz	
55.	38400458	Sakhi Gul	
56.	38400080	Umer Baz	
57. ✓	38400334	Gul Asghar (disable)	

Annexure

OFFICE OF THE AGENCY EDUCATION OFFICER
F.R KOHAT,
Gate No.2 K.D.A Kohat
Phone & Fax No. 0922-9260321.

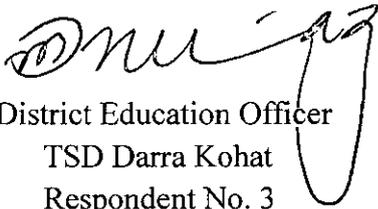
ATTENDANCE SHEET FOR THE INTERVIEW ON DATED 12-08-2011

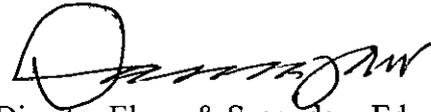
CT MALE

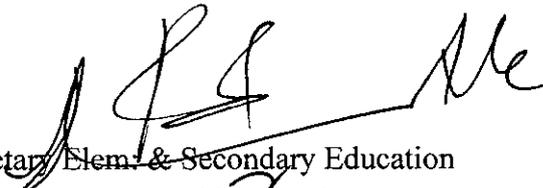
SNo.	Roll No	NAME OF CANDIDATE	SIGNATURE
1. ✓	38400180	Ihsan Mumtaz	
2. ✓	38400583	Shahid Ullah	
3. ✓	38400725	Noor Asghar	
4. ✓	38400176	Wajid Niaz	
5. ✓	38400510	Inyat Ur Rehman	
6. ✓	38400677	Sanobar Khan	
7. ✓	23400826	Muhammad Irshad	
8. ✓	38400057	Aamir Mehmood	
9. ✓	38400596	Naseeb Hussain	
10. ✓	38400302	Nasir Jamal	
11. ✓	60401161	Lugman	
12. ✓	38400013	Adil Muhammad	
13. ✓	38400344	Naeem Khan	
14.	38400570	Arif Noor	
15.	38400117	Ihsan Ullah	
16. ✓	38400461	Qamar Abbas	
17. ✓	60401937	Muhammad Umer	
18. ✓	38400690	Aziz ur Rehman	
19. ✓	38400515	Akhtar Ayub	
20. ✓	38400063	Kamran Adil	
21.	60400395	Muhammad Kashif	
22. ✓	38400072	Umer Nawaz	
23.	38400463	Nasir Khan	
24.	60400207	Muhammad Rabib	

PRAY.

In the light of above legal and factual position, it is humbly requested that the instant appeal is baseless and may please be dismissed with cost.

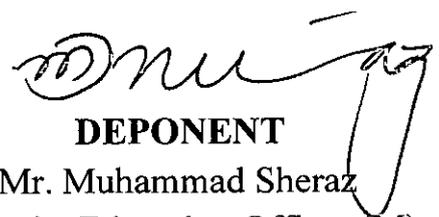

District Education Officer
TSD Darra Kohat
Respondent No. 3


Director Elem: & Secondary Education
Khyber Pakhtunkhwa Peshawar
Respondent No. 2

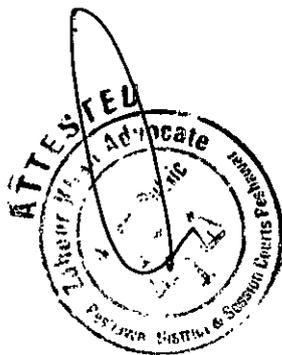

Secretary Elem: & Secondary Education
Khyber Pakhtunkhwa Peshawar
Respondent No. 1

AFFIDAVIT

I Mr. Muhammad Sheraz DEO TSD Dara Kohat, do here by affirm and declared that the contents of para wise comments regarding the service appeal No. 11015/2020 are true, correct and nothing has been concealed from this Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar.


DEPONENT
Mr. Muhammad Sheraz
District Education Officer (M)
TSD Darra Kohat

CNIC# 14203-2057044-7
Mobil #0300-5325372



20 DEC 2022

7. Para No. 7 is incorrect the judgment of Honorable Peshawar High Court was announced on 25-09-2018 with the directions that “In the light of above we allow this petition and direct the respondent to issue appointment letter to the petitioner of CT Teacher against 2% quota of disable person against 136 posts of CT teaches (Male) within 15 days from the date of receipt of the order of this Court”.

Hence the Honorable Peshawar High Court Judgment was announced in favor of Petitioner on 25-09-2018 and was implemented wide appointment order on dated 11-10-2018. Copy of appointment order and Judgment is attached as **Annexure B & C**.

As per Agency/ FR wise number of vacant posts actual position of total vacant posts of CT are only 03 out of 90 whole CT posts in TSD Darra Kohat and it was also mentioned/ stated in the Para wise Comments of the Respondent No. 1 & 2 before the Honorable Peshawar High Court against the appellant writ petition No. 276-P/2018 that there are total number of 90 posts of CT and 02 candidates have already been appointed against the 2% disable quota while 136 vacant posts of CT is the grand total of all agencies/FR wise number of vacant posts. Copy of agency/ FR wise vacant posts and Para wise comments is attached as **Annexure D & E**.

8. Para No. 8 is incorrect as stated in above Para 6.
9. No Comments.

Grounds

- A. Ground Para No. A is incorrect that the act of respondent is according with rule and policy.
B. Ground Para No. B is incorrect the respondent implemented the Judgment of Peshawar High Court.
C. Ground Para No. C is incorrect as stated in above Para B.
D. Ground Para No. D is incorrect as stated in above Para B.
E. Ground Para No. E is incorrect that no discrimination was made by the Respondent.
F. Ground Para No. F is incorrect as stated in above Para B.
G. Ground Para No. G is incorrect as stated in above Para B.
H. The Respondent sick leave to raise additional ground at the time of arguments.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

S.A No. 11015 /2020

Mr. Kabeer Khan, CT (BPS-15), R/O Qaum Taz Khel Payyan Jogi, Sub-Division Kohat.....**Appellant**

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE) Department, Civil Secretariat, Peshawar.
2. The Director, (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (male), Sub Division Darra Adam Khel, Kohat.....**Respondent**

PARA WISE COMMENTS ON THE BEHALF OF RESPONDENT NO. 1 to 3.

Respectfully Sheweth

- i. That the Appellant has got no cause of action, locus standi to file the instant Appeal.
- ii. That the Appellant has concealed material facts from honorable Tribunal.
- iii. That the Appellant has not come to this honorable Tribunal with clean hands.
- iv. That the Appellant case is not maintainable.
- v. That the Appellant is based upon malicious/vexatious and frivolous ground.
- vi. That the Appellant is estopped by his own conduct.
- vii. That the Appeal of the appellant is badly time barred.
- viii. That the Appeal is bad for misjoinder and non-joinder of necessary parties.

FACTS:

1. Para No. 1 pertains to record.
2. Para No. 2 pertains to record.
3. Para No. 3 pertains to record.
4. Para No. 4 is incorrect that the appellant was called for interview to appear before the Departmental Selection Committee, but the appellant was failed to do so and reminded absent. Copy of attendance Sheet is attached as **Annexure A**.
5. Para No. 5 pertains to record.
6. Para No. 6 is incorrect the said WP No. 2629-P/2013 was decided on 05-03-2015, the judgment is "In the view of such background of the case and the record so furnished by the concern representative of the Education Department, we understand that the Petitioner have been highly discriminated against for the last two year and have not been given an even-handed treatment. We thus allow this writ petition and direct the Respondents to issue appointment letters in the names of the petitioners for their respective posts with in this month".

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

S.A No. 11015/2020

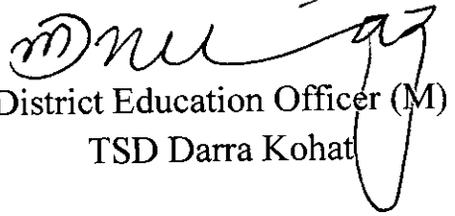
Mr. Kabeer Khan, CT (BPS-15), R/O Qaum Taz Khel Payyan Jogi, Sub-Division
Kohat.....**Appellant**

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary (E&SE) Department, Civil Secretariat, Peshawar.
2. The Director, (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (male), Sub Division Darra Adam Khel,
Kohat.....**Respondent**

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District Education Officer (M)
TSD Darra Kohat